

TITLE 14 DEPARTMENT OF PARKS AND RECREATION

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN the Department of Parks and Recreation (Department) proposes to amend the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to amend the regulations and documents incorporated by reference in the California Code of Regulations (CCR), Title 14, Division 3, Chapter 15, Articles 1 through 5, Sections 4970.00 through 4970.26 pertaining to the Off-Highway Motor Vehicle Recreation (OHMVR) Grants and Cooperative Agreements Program (Program).

PUBLIC HEARINGS

The Department will hold two public hearings on the proposed rulemaking. The hearings will be held:

Date: October 1, 2009

Time: 6:00 p.m. to 9:00 p.m.

Location: San Diego
Old Town San Diego State Historic Park
4002 Wallace Street
San Diego, CA 92110
(619) 220-5422

- and -

Date: October 13, 2009

Time: 6:00 p.m. to 9:00 p.m.

Location: Sacramento
OHMVR Headquarters
1725 23rd Street, Suite 200
Sacramento, CA 95816
(916) 324-4442

At the hearings, any interested person, or his or her authorized representative, may present oral or written statements, arguments, or contentions relevant to the proposed action described in the Informative Digest. The Department may impose reasonable limits on oral presentations. The Department requests, but does not require, persons making oral comments at the hearings also submit a written copy of their testimony at the conclusion of their remarks. Additionally, pursuant to Government Code Section 11125.1, any information presented to the Department during the open hearings in connection with the matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Department and shall be made available upon request.

Written comments other than those presented at the public hearings may be submitted to the Department as described below.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relative to the proposed rulemaking to the Department. The written comment period ends at 5:00 p.m., on October 12, 2009. The Department will consider only written comments received at the Department's office by that time (in addition to those comments received at the public hearing). All written comments shall be submitted to the following address:

Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
Attn: Sixto Fernandez, Grants Manager
Grants and Cooperative Agreements
1725 23rd Street, Suite 200
Sacramento, California 95816-7100

Written comments of not more than 10 pages will be accepted by the Department via facsimile at (916) 324-1610. A fax transmission must be completed by the deadline given above.

Inquiries or written comments may be directed to Sixto Fernandez at (916) 324-1572 or via email at sfernandez@parks.ca.gov by the deadline given above.

The back-up contact person regarding the proposed action/text is:

Kelly Long, Grants Administrator, phone number (916) 324-3741 or e-mail address: kclong@parks.ca.gov.

AUTHORITY AND REFERENCE

Authority Citation: The proposed amendments are authorized by Public Resources Code (PRC) Sections 5001.5 and 5003.

Reference Citation: The particular code sections implemented, interpreted, or made specific by these proposed amendments are PRC Sections 5090.02, 5090.35, 5090.50, 5090.53, and 5090.61.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Background and History

PRC Section 5090.01 et seq., also known as the Off-Highway Motor Vehicle Recreation Act of 2003 (Act), as amended, governs off-highway motor vehicle grants and cooperative agreements with cities, counties, districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, educational institutions, and State agencies. The Act was most recently amended by Senate Bill 742 (SB 742) which had an effective date of January 1, 2008. SB 742 extended the Act to January 1, 2018, deleted certain obsolete provisions, and made significant amendments to the provisions guiding the OHMVR Program.

The Program is administered by the OHMVR Division within the Department of Parks and Recreation. The Program allows the State to assist eligible agencies and organizations to develop, maintain, expand and manage high-quality Off-Highway Vehicle (OHV) recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat in a manner that will sustain long-term OHV recreation. Assistance is provided in the form of reimbursable grant funding.

Following enactment of SB 742, the Department proposed permanent regulations, which were adopted and appear in the California Code of Regulations as Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26. These regulations apply to grant and cooperative agreement applications received by the OHMVR Division on or after January 1, 2008. Under the approved regulations, grant funding may be applied for using a two-step application submission process. This process ensures public review and comment, allows for preliminary review by the OHMVR Division, and provides the opportunity for applicants to submit stronger, more competitive final applications. The OHMVR Division requires application submission using the On-Line Grant Application (OLGA) database, a web-based system that allows applicants to develop and submit their application via the internet.

Upon completion of the 2008/09 grants cycle, the OHMVR Division identified areas in the regulations that warrant revision. As a result, the Department is proposing to amend portions of CCR Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26 and documents incorporated by reference. These amendments to the regulations will eliminate confusing aspects to the Program, ensure OHV trust funds are disbursed appropriately, and increase efficiency for applicants and staff.

Effect of Proposed Rulemaking

The Department is proposing to amend the OHMVR Grants and Cooperative Agreements Program Regulations, CCR Title 14, Division 3, Chapter 15, Articles 1 through 4, Sections 4970.00 – 4970.26 and documents incorporated by reference as follows:

Section 4970.00 is amended to update the applicable date of the regulations.

Section 4970.01 is amended to delete unnecessary definitions, clarify an existing definition, and correct grammar and punctuation. The section is re-lettered to maintain alphabetical order.

Section 4970.05 is amended to make specific several general application requirements. The time period and steps to notify the public of their opportunity to review and comment are defined. The required application contents are amended to specify documentation for nonprofit organizations and entities that must submit a governing body resolution.

Section 4970.06.1 is amended to explain how applicants may document environmental compliance when applying for projects pursuant to Section 4970.06.1(b). Section 4970.06.1(c) is specific to city, county, district, educational and nonprofit organization applicants. Section 4970.06.1(c) is specific to federal agencies and federally recognized Native American tribe applicants. The section is also amended to remove inconsistent or extraneous language and renumbered to retain numerical order.

Section 4970.07 is amended to provide additional clarity regarding the application submission process. Proposed amendments specify submittal requirements for nonprofit organizations and educational institutions, as described in Section 4970.05. Additionally, amendments specify the OHMVR Division will provide comments to applicants regarding their preliminary applications. The section is also amended to correct grammar.

Section 4970.07.2 is amended to explain actions the OHMVR Division may take to adjust or reject projects. Proposed amendments specify the reasons an application may be adjusted by the OHMVR Division. Portions of the section are renumbered to retain numerical order.

Section 4970.08 is amended to clarify wording and to specify equipment rental or lease fees are eligible costs. Amendments also specify limits on the cost of equipment purchased by nonprofit organizations.

Section 4970.10 is amended to provide consistency in the regulations.

Section 4970.10.1 is amended to clarify project-specific requirements for ground operations projects.

Section 4970.10.3 is amended to correct grammar.

Section 4970.10.4 is amended to require deed restrictions for property acquired under the Program. Portions of the section are re-lettered to maintain alphabetical order or amended to correct grammar.

Section 4970.11 is amended to ensure applicants demonstrate a nexus between OHV recreation and a restoration project. Amendments also clarify project-specific requirements for restoration projects.

Section 4970.14.1 is amended to correctly reference a defined term and to correct grammar.

Section 4970.14.3 is amended to correct grammar.

Section 4970.15.1 is amended to clearly reference an existing subsection which details the funding distribution process under certain circumstances. Table 4 is updated to reflect changes to the possible score.

Section 4970.15.2 is amended to update Table 5 which reflects changes to the possible score.

Section 4970.15.3 is amended to specify that the base funding for law enforcement grant is awarded on a per applicant basis, instead of per project.

Section 4970.17 is amended to explain the ramifications of an appeal.

Section 4970.19 is amended to provide a consistent reference throughout the regulations.

Section 4970.19.2 is amended to correct grammar.

Section 4970.19.4 is amended to correct grammar.

Section 4970.19.6 is amended to delete a duplicate note in the regulations.

Section 4970.20 is amended to use the appropriate term in the regulations.

Section 4970.21 is amended to delete an unnecessary acronym.

Section 4970.22 is amended to remove unnecessary acronyms, correct grammar, and replace a deleted term with the correct word. The amendments also clearly explain the requirements of matching funds for the Program.

Section 4970.24 is amended to correct grammar and identify what item will be delivered to the Audits Office for audit.

Section 4970.25.1 is amended to remove unnecessary capitalization and correct grammar.

Section 4970.26 is amended to correctly refer to a defined term.

Environmental Review Data Sheet is amended to correspond with proposed amendments to *Section 4970.06.1*. The document is amended to direct applicants to discuss whether projects could have a significant effect on the environment due to erosion. The document is amended to instruct applicants to discuss the impact of the project on historical or cultural resources.

Project Cost Estimate is amended to use an appropriate definition.

General Provisions – Federal Agencies is added to provide general provisions for federal agencies other than the United States Forest Service or the Bureau of Land Management.

Evaluation Criteria - General Criteria is amended to allow land managers to provide more accurate documentation of OHV visitation. The document is amended to adjust scoring for applicants that do not maintain OHV recreation programs. The document is amended to clarify specific scoring criteria.

Evaluation Criteria – Acquisition Project Criteria is amended to clarify specific scoring criteria.

Evaluation Criteria – Development Project Criteria is amended to clarify specific scoring criteria.

Evaluation Criteria – Education and Safety Criteria is amended to clarify specific scoring criteria.

Evaluation Criteria – Ground Operations Project Criteria is amended to clarify specific scoring criteria.

Evaluation Criteria – Planning Project Criteria is amended to clarify specific scoring criteria.

Evaluation Criteria – Restoration Project Criteria is amended to clarify specific scoring criteria.

COMPARABLE FEDERAL REGULATION OR STATUTE

The proposed amendments do not duplicate or conflict with federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Department has determined these proposed regulation amendments do not impose a mandate on local agencies or school districts. Participation in the OHMVR Grants and Cooperative Agreements Program is voluntary.

DISCLOSURES/ESTIMATE OF ECONOMIC AND FISCAL IMPACT

Fiscal Impact on Local Agencies or School Districts: These regulations do not impose any cost on a local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4, Government Code, nor do they impose any nondiscretionary cost or saving on local agencies.

Fiscal Impact on State Government: These regulations do not impose any cost or savings to the State or any cost or savings in federal funding to the State.

Economic Impact on Business: The Department has made an initial determination these regulations do not have a significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effect on Jobs and Businesses: Adoption of these regulations will not: 1) create or eliminate jobs within California, 2) create new businesses or eliminate existing businesses within California, or 3) affect the expansion of businesses currently doing business within California.

Impact on Housing: These regulations would not have a significant effect on housing costs.

Determination Regarding Effect on Small Businesses: The Department has determined there are no cost impacts on small businesses because this is a grant program for federal agencies, federally recognized Native American tribes, cities, counties, districts, State agencies, nonprofit organizations, and educational institutions.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department has determined no reasonable alternative it considered or has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an Initial Statement of Reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. Copies may be obtained by contacting Sixto Fernandez at the e-mail address listed previously. The rulemaking file, which contains all information on which the proposal is based, is located at the OHMVR Division, 1725 23rd Street, Suite 200, Sacramento, California, 95816-7100, and may be obtained upon request. Additionally, the Initial Statement of Reasons and the text of the proposed regulations and documents incorporated by reference may be obtained from the Department's website located at www.ohv.parks.ca.gov at the Grants link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding public hearings and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes substantive modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, a Final Statement of Reasons may be obtained by contacting Sixto Fernandez at the aforementioned address and will be made available through the Division website at www.ohv.parks.ca.gov, at the Grants link.